



# House of Representatives

General Assembly

**File No. 291**

February Session, 2002

Substitute House Bill No. 5539

*House of Representatives, April 3, 2002*

The Committee on Environment reported through REP. STRATTON of the 17th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT CONCERNING MERCURY EDUCATION AND REDUCTION.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. (NEW) (*Effective July 1, 2002*) The General Assembly finds  
2       that mercury is a persistent and toxic pollutant that bioaccumulates in  
3       the environment, and that in order to create and maintain a healthful  
4       environment and protect public health, the virtual elimination of the  
5       discharge of anthropogenic mercury should be pursued.

6       Sec. 2. (NEW) (*Effective July 1, 2002*) As used in sections 1 to 12,  
7       inclusive, of this act:

8       (1) "Mercury" means elemental mercury and mercury compounds;

9       (2) "Mercury-added product" means a product, commodity,  
10      chemical or component of a product to which mercury or a mercury  
11      compound is intentionally added in order to provide a specific  
12      characteristic, appearance, or quality, to perform a specific function or  
13      for any reason. "Mercury-added product" includes, but is not limited

14 to, formulated mercury-added products and fabricated mercury-added  
15 products. "Mercury-added product" does not include any packaging  
16 component, as defined in subdivision (3) of section 22a-255h of the  
17 general statutes;

18 (3) "Formulated mercury-added product" means a mercury-added  
19 product that is sold as a consistent mixture of chemicals, including, but  
20 not limited to, laboratory chemicals, materials used for cleaning,  
21 maintenance or disinfection, cosmetics, pharmaceuticals, coating  
22 materials, acids, alkalites, bleach, pharmaceutical products, stains,  
23 reagents, preservatives, fixatives, buffers and dyes;

24 (4) "Fabricated mercury-added product" means a mercury-added  
25 product that consists of a combination of individual components that  
26 combine to make a single unit, including, but not limited to, mercury-  
27 added measuring devices, lamps and switches;

28 (5) "Mercury fever thermometer" means a mercury-added product  
29 that is used for measuring body temperature, but does not mean a  
30 digital thermometer that includes a button cell battery containing  
31 mercury;

32 (6) "Mercury-added novelty" means a mercury-added product  
33 intended mainly for personal or household enjoyment or adornment,  
34 including, but not limited to, products intended for use as practical  
35 jokes, figurines, adornments, toys, games, cards, ornaments, yard  
36 statues and figures, candles, jewelry, holiday decorations or footwear  
37 or other items of apparel. A product is not a "mercury-added novelty"  
38 solely on the basis that it includes a removable button cell battery  
39 containing mercury;

40 (7) "Manufacturer" means any person that (A) produces a mercury-  
41 added product, or (B) serves as an importer or domestic distributor of  
42 a mercury-added product produced outside the United States. In the  
43 case of a multi-component product, "manufacturer" means the last  
44 manufacturer to produce or assemble the product, unless the multi-  
45 component mercury-added product is produced outside the United

46 States, in which case "manufacturer" means the importer or domestic  
47 distributor;

48 (8) "Person" means any individual, organization, partnership, joint  
49 venture, association, firm, limited liability company, corporation or  
50 other entity, and includes a municipality, the federal government, the  
51 state or any instrumentality of the state, or other governmental entity  
52 and any officer or governing or managing body of any partnership,  
53 association, firm or corporation or any member or manager of a  
54 limited liability company;

55 (9) "Vehicle" means any device capable of being moved upon a  
56 public highway and any device in, upon or by which any person or  
57 property is or may be transported or drawn upon a public highway,  
58 but does not include devices moved by human or animal power or  
59 used exclusively upon stationary rails or tracks;

60 (10) "Scrap metal" means used or discarded items that consist  
61 predominantly of ferrous metals, aluminum, brass, copper, lead,  
62 chromium, tin, nickel or alloys;

63 (11) "Solid waste" means unwanted or discarded solid, liquid,  
64 semisolid or contained gaseous material, including, but not limited to,  
65 demolition debris, material burned or otherwise processed at a  
66 resources recovery facility or incinerator, material processed at a  
67 recycling facility, sludges or other residue from a water pollution  
68 abatement facility, water supply treatment plant or air pollution control  
69 facility;

70 (12) "Commissioner" means the Commissioner of Environmental  
71 Protection;

72 (13) "Pollution abatement facility" means any equipment, plant,  
73 treatment works, structure, machinery, apparatus or land, or any  
74 combination thereof, acquired, used, constructed or operated for the  
75 storage, collection, reduction, recycling, reclamation, disposal,  
76 separation or treatment of water or wastes, or for the final disposal of

77 residues resulting from the treatment of water or wastes, including,  
78 but not limited to, (A) pumping and ventilating stations, facilities,  
79 plants and works; (B) outfall sewers, interceptor sewers and collector  
80 sewers; and (C) other real or personal property and appurtenances  
81 incident to such facilities' use or operation;

82 (14) "Subsurface sewage disposal system" means a system consisting  
83 of a house or collection sewer, a septic tank followed by a leaching  
84 system, any necessary pumps or siphons and any groundwater control  
85 system on which the operation of the leaching system is dependent.

86 Sec. 3. (NEW) (*Effective July 1, 2002*) The commissioner shall  
87 participate in the establishment and implementation of a regional,  
88 multi-state clearinghouse to assist in carrying out the requirements set  
89 forth in sections 1 to 12, inclusive, of this act and to help coordinate  
90 reviews of the manufacturers' notifications regarding mercury-added  
91 products, applications for phase-out exemptions, collection system  
92 plans, disclosures of mercury content, applications for alternative  
93 labeling or notification systems or both, education and outreach  
94 activities, and any other functions related to sections 1 to 12, inclusive,  
95 of this act. The commissioner shall consider the decisions of the  
96 clearinghouse in making determinations with respect to the  
97 requirements of sections 1 to 12, inclusive, of this act.

98 Sec. 4. (NEW) (*Effective July 1, 2002*) (a) On and after January 1, 2003,  
99 no person shall offer any mercury-added product for sale or use by  
100 any means, including e-commerce, or distribute for promotional  
101 purposes in this state unless the manufacturer gives prior notification  
102 in writing to the commissioner or the regional, multi-state  
103 clearinghouse described in section 3 of this act as provided in this  
104 section. Such notification, in a form prescribed by the commissioner,  
105 shall at a minimum include (1) a brief description of the product or  
106 category of products to be offered for sale or use or distributed; (2) an  
107 identification of each product by its mercury content in one of the  
108 following ranges: Less than zero to five milligrams, greater than five  
109 milligrams to ten milligrams, greater than ten milligrams to fifty

110 milligrams, greater than fifty milligrams to one hundred milligrams,  
111 greater than one hundred milligrams to one thousand milligrams and  
112 greater than one thousand milligrams; and (3) the name and address of  
113 the manufacturer and the name, address and phone number of a  
114 contact person at the manufacturer. The manufacturer shall revise the  
115 information in the notification whenever there is significant change in  
116 the information or when requested by the commissioner.

117 (b) Any mercury-added product for which federal law preempts  
118 state authority over notice requirements is exempt from the  
119 requirements of this section.

120 (c) With the approval of the commissioner, the manufacturer may  
121 supply the information required in subdivisions (1) to (3), inclusive, of  
122 subsection (a) of this section for a product category rather than an  
123 individual product.

124 (d) Public disclosure of trade secrets submitted to the commissioner  
125 pursuant to this section shall be governed by the provisions of chapter  
126 14 of the general statutes. Notwithstanding the provisions of said  
127 chapter 14, the commissioner may provide the regional, multi-state  
128 clearinghouse described in section 3 of this act with copies of such  
129 information and the commissioner may assist the clearinghouse in  
130 compiling or publishing analyses or summaries of such information,  
131 provided the analyses or summaries do not identify any manufacturer  
132 or reveal any confidential information.

133 Sec. 5. (NEW) (*Effective July 1, 2002*) (a) Notwithstanding the  
134 provisions of section 6 of this act, on and after July 1, 2003, no person  
135 shall offer for sale or use by any means, including e-commerce, or  
136 distribute for promotional purposes in the state any mercury-added  
137 novelty. A manufacturer that produces or sells mercury-added  
138 novelties shall notify retailers that sell mercury-added novelties about  
139 such product ban and inform such retailers of how to dispose of the  
140 remaining inventory in accordance with chapter 445 of the general  
141 statutes.

142 (b) Notwithstanding the provisions of section 6 of this act, on and  
143 after January 1, 2003, no person shall offer for sale or use by any  
144 means, including e-commerce, or distribute for promotional purposes  
145 mercury fever thermometers except by prescription written by a  
146 physician. A manufacturer of mercury fever thermometers shall  
147 provide the buyer or the recipient with notice of mercury content,  
148 instructions on proper disposal and instructions that clearly describe  
149 how to carefully handle the thermometer to avoid breakage and on  
150 proper cleanup should a breakage occur.

151 (c) Notwithstanding the provisions of section 6 of this act, on and  
152 after July 1, 2003, no person shall offer for sale or use by any means,  
153 including e-commerce, or distribute for promotional purposes mercury  
154 dairy manometers. A manufacturer that produce or sell mercury dairy  
155 manometers shall notify retailers about the provisions of this  
156 subsection and how to dispose of the remaining inventory properly in  
157 accordance with chapter 445 of the general statutes. The Commissioner  
158 of Environmental Protection, in consultation with the Commissioner of  
159 Agriculture, shall examine the feasibility of implementing a collection  
160 and replacement program for dairy manometers, and shall implement  
161 such a program within available appropriations.

162 Sec. 6. (NEW) (*Effective July 1, 2002*) (a) Except as provided in section  
163 7 of this act, no person shall offer for sale or use by any means,  
164 including e-commerce, or distribute for promotional purposes any  
165 mercury-added product if: (1) After July 1, 2004, the mercury content  
166 of the product exceeds one gram in the case of fabricated mercury-  
167 added products or two hundred fifty parts per million in the case of  
168 formulated mercury-added products; and (2) on and after July 1, 2006,  
169 the mercury content of the product exceeds one hundred milligrams in  
170 the case of fabricated mercury-added products or fifty parts per  
171 million in the case of formulated mercury-added products.

172 (b) Not later than July 1, 2003, the commissioner shall convene a  
173 working group which shall include, but not be limited to, government  
174 representatives from other northeastern states to study and make

175 recommendations regarding the regulation of mercury-added  
176 products that have a mercury content in excess of ten milligrams or ten  
177 parts per million but less than one hundred milligrams or fifty parts  
178 per million.

179 (c) In the case of a product that contains one or more mercury-  
180 added products as a component, the phase-out limits specified in  
181 subsection (a) of this section apply to each component part or parts  
182 and not to the entire product.

183 (d) For a product that contains more than one mercury-added  
184 product as a component, the phase-out limits specified in subsection  
185 (a) of this section shall apply to each component.

186 Sec. 7. (NEW) (*Effective July 1, 2002*) (a) The commissioner shall  
187 exempt a mercury-added product from the limits on total mercury  
188 content set forth in subsection (a) of section 6 of this act if the level of  
189 mercury or mercury compounds contained in the product are  
190 necessary to comply with federal or state health or safety  
191 requirements. In order to obtain such exemption, the manufacturer  
192 shall provide the commissioner and the regional, multi-state  
193 clearinghouse described in section 3 of this act with information that  
194 demonstrates such necessity.

195 (b) A manufacturer of a mercury-added product or category of  
196 products may apply to the commissioner and the clearinghouse for a  
197 modified or conditional exemption from the limits on total mercury  
198 content set forth in subsection (a) of section 6 of this act provided such  
199 exemption shall be for not more than four years. Prior to issuing a  
200 modified or conditional exemption, the commissioner shall consult  
201 with the clearinghouse, states, provinces and regional governmental  
202 organizations to promote consistency in the implementation of this  
203 section. The commissioner may renew, for a period of not longer than  
204 four years, a modified or conditional exemption one or more times if  
205 (1) the manufacturer applies for the renewal, and (2) the commissioner  
206 finds that the manufacturer meets the requirements for such  
207 exemption as provided by the clearinghouse and that the

208 manufacturer has complied with all the conditions of the original  
209 approval.

210       Sec. 8. (NEW) (*Effective July 1, 2002*) (a) On and after July 1, 2004, no  
211 person shall offer for sale or use by any means, including e-commerce,  
212 or distribute for promotional purposes any mercury-added product  
213 unless both the product and either its packaging or care and use  
214 manual are labeled in accordance with this section, any regulations  
215 adopted under this section or the terms of any approved alternative  
216 labeling or notification granted under subsection (h) of this section. A  
217 retailer shall not be found in violation of this subsection if the retailer  
218 lacked knowledge that the product contained mercury.

219       (b) If a mercury-added product is a component of another product,  
220 the product containing the component and the component shall both  
221 be labeled as provided in this section, provided such component may  
222 feasibly be removed from the product by the purchaser. The label on a  
223 product containing a mercury-added component shall identify the  
224 component with sufficient detail so that the component may be readily  
225 located.

226       (c) All labels contained on packaging shall be clearly visible prior to  
227 sale and shall be sufficient to inform the purchaser, using words or  
228 symbols, that mercury is present in the product and that the product  
229 should be properly disposed of or recycled.

230       (d) Labels affixed to the product shall be constructed of materials  
231 that are sufficiently durable to remain legible for the useful life of the  
232 product.

233       (e) On and after July 1, 2004, any person offering a mercury-added  
234 product for sale or use by any means, including e-commerce, or  
235 distributing such product for promotional purposes shall clearly  
236 advise in writing the purchaser or recipient prior to the time of sale,  
237 use or distribution that the product contains mercury. Such  
238 requirement shall apply to all transactions in which the purchaser or  
239 recipient is unable to view the labels on the package or the product



240 prior to purchase or receipt, including, but not limited to, catalog,  
241 telephone and e-commerce transactions.

242 (f) The manufacturer of a product shall be responsible for product  
243 and package labels required under this section, unless the wholesaler  
244 or retailer agrees in writing to accept the responsibility of  
245 implementing an alternative to the labeling requirements of this  
246 section provided such alternative is approved under subsection (h) of  
247 this section.

248 (g) (1) Manufacturers shall meet all the requirements of this section  
249 for large appliances, including, but not limited to, washers, dryers,  
250 ovens, including microwave ovens, refrigerators, air conditioners,  
251 dehumidifiers or portable heaters sold in a store where such appliance  
252 is on display, except that no package labeling shall be required; (2)  
253 manufacturers shall meet all the requirements of this section for  
254 mercury fever thermometers, except that no product labeling shall be  
255 required; (3) in the case of vehicles, (A) manufacturers shall meet the  
256 product labeling requirements of this section for vehicles by placing a  
257 label on the doorpost of the vehicles that lists the mercury-added  
258 components that may be present in the vehicle, and (B) manufacturers  
259 shall not be required to label the mercury-added components of the  
260 vehicle; (4) manufacturers shall meet all the requirements of this section  
261 for button cell batteries containing mercury, except that no product  
262 labeling shall be required; and (5) in the case of products that contain  
263 button cell batteries containing mercury as the only mercury  
264 components, manufacturers shall meet the packaging requirements of  
265 this section by including a label in the product instructions, if any, and  
266 on the packaging, and no further product labeling shall be required.

267 (h) A manufacturer may apply to the commissioner and the  
268 regional, multi-state clearinghouse described in section 3 of this act for  
269 an alternative to the requirements of subsections (a) to (g), inclusive, of  
270 this section if: (1) Compliance with the requirements is not feasible; (2)  
271 the proposed alternative would be at least as effective in providing  
272 presale notification of mercury content and in providing instructions

273 on proper disposal; or (3) federal law preempts state authority over  
274 labeling.

275       Sec. 9. (NEW) (*Effective July 1, 2002*) (a) On and after July 1, 2003, no  
276 person shall offer any mercury-added product for sale or use by any  
277 means, including e-commerce, or distribute any such product for  
278 promotional purposes unless the manufacturer either on its own or in  
279 concert with other persons has submitted a plan to the commissioner  
280 for a system that reasonably enables the collection of such products. If  
281 a mercury-added product is a component of another product, the  
282 collection system shall provide for removal and collection of the  
283 mercury-added component or collection of both the mercury-added  
284 component and the product containing it.

285       (b) The collection system shall include (1) a public education  
286 program to inform the public about the purpose of the collection  
287 program and how to participate in it; (2) a targeted capture rate for the  
288 mercury-added product or component; (3) a plan for implementing  
289 and financing the collection system; (4) documentation of the  
290 willingness of all parties to the system to implement the proposed  
291 collection system; (5) a description of the performance measures to be  
292 utilized and reported by the manufacturer to demonstrate that the  
293 collection system is meeting capture rate targets; (6) a description of  
294 additional or alternative actions that will be implemented to improve  
295 the collection system and its operation in the event that the program  
296 targets are not met; and (7) a recycling or disposal plan and an  
297 identification of any regulatory impediments to such plan.

298       (c) Not later than January 1, 2004, and biennially thereafter, the  
299 manufacturer or entity that submitted the plan on behalf of the  
300 manufacturer shall submit a report to the commissioner and to the  
301 regional, multi-state clearinghouse described in section 3 of this act on  
302 the effectiveness of the collection system. The report shall include an  
303 estimate of the amount of mercury that was collected, the capture rate  
304 for the mercury-added products or components, the results of the  
305 other performance measures included in the manufacturer's collection

306 system plan, and such other information as the commissioner may  
307 require. The commissioner shall make such reports available to the  
308 public.

309 (d) The cost for the collection system shall not be borne by state or  
310 local government.

311 (e) The commissioner shall review any impediments identified  
312 pursuant to subdivision (7) of subsection (b) of this section and the  
313 regulations adopted under chapter 445 of the general statutes  
314 governing handling of waste from mercury-added products and, if  
315 necessary, may amend regulations as appropriate to facilitate  
316 collection.

317 (f) The following are exempt from the provisions of this section: (1)  
318 Formulated mercury-added products intended to be consumed in use,  
319 including, but not limited to, reagents, cosmetics, pharmaceuticals and  
320 other laboratory chemicals; (2) fabricated mercury-containing products  
321 where the only mercury is contained in a component that cannot  
322 feasibly be removed by the purchaser including, but not limited to,  
323 liquid crystal display backlighting; (3) photographic film and paper;  
324 and (4) any other product that contains less than ten milligrams of  
325 mercury or for which the commissioner determines a collection plan is  
326 not feasible because of the small number of such products.

327 Sec. 10. (NEW) (*Effective July 1, 2002*) No person shall offer for sale  
328 or use by any means, including e-commerce, or distribute for  
329 promotional purposes or provide elemental mercury without  
330 providing a Material Safety Data Sheet, as defined in 42 USC 11049. On  
331 and after July 1, 2003, the seller, distributor or provider shall require  
332 the purchaser or recipient at the time of receipt of any elemental  
333 mercury to sign a statement that the purchaser or recipient (1) will use  
334 the mercury only for medical, dental amalgam dispose-caps, research  
335 or manufacturing purposes; (2) understands that mercury is toxic and  
336 that the purchaser will store and use it appropriately so that no person  
337 is exposed to the mercury; and (3) will not place or allow anyone  
338 under the control of the purchaser or recipient to cause the mercury to

339 become solid waste or be discharged into waters of the state or be  
340 disposed of in a pollution abatement facility or subsurface sewage  
341 disposal system.

342 Sec. 11. (NEW) (*Effective July 1, 2002*) Mercury-added products with  
343 a code or date of manufacture indicating they were manufactured  
344 prior to July 1, 2002, or mercury-added products for which the  
345 manufacturer provides documentation that the product was  
346 manufactured prior to July 1, 2002, are exempt from sections 5, 6, 8 and  
347 9 of this act.

348 Sec. 12. (NEW) (*Effective July 1, 2002*) (a) The commissioner, in  
349 consultation with other state agencies, may implement a  
350 comprehensive program for public education, outreach and assistance  
351 for manufacturers, households, waste generators, local and regional  
352 solid waste management agencies, businesses, health care facilities,  
353 scrap metal processors, recyclers, dismantlers, institutions, schools and  
354 other interested groups. Such program may focus on the hazards of  
355 mercury; the requirements and obligations of individuals,  
356 manufacturers and agencies under sections 1 to 11, inclusive, of this act  
357 and voluntary efforts that individuals, institutions and businesses can  
358 undertake to help further reduce mercury in the environment. The  
359 commissioner, in conjunction with manufacturers of mercury-added  
360 products and other affected businesses, may promote the development  
361 and implementation of such public education and technical assistance  
362 programs.

363 (b) The commissioner may cooperate with other states and  
364 provinces and regional organizations in developing public education,  
365 outreach and assistance programs.

366 (c) The commissioner may develop an awards program to recognize  
367 the accomplishments of manufacturers, municipalities, waste  
368 management facilities, waste recycling facilities, household hazardous  
369 waste collection facilities, or other persons who exceed the minimum  
370 requirements of sections 4 to 11, inclusive, of this act, and who excel at  
371 reducing or eliminating mercury in air emissions or releases.

This act shall take effect as follows:	
Section 1	<i>July 1, 2002</i>
Sec. 2	<i>July 1, 2002</i>
Sec. 3	<i>July 1, 2002</i>
Sec. 4	<i>July 1, 2002</i>
Sec. 5	<i>July 1, 2002</i>
Sec. 6	<i>July 1, 2002</i>
Sec. 7	<i>July 1, 2002</i>
Sec. 8	<i>July 1, 2002</i>
Sec. 9	<i>July 1, 2002</i>
Sec. 10	<i>July 1, 2002</i>
Sec. 11	<i>July 1, 2002</i>
Sec. 12	<i>July 1, 2002</i>

**ENV**      *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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**OFA Fiscal Note****State Impact:**

<b>Fund-Type</b>	<b>Agency Affected</b>	<b>FY 03 \$</b>	<b>FY 04 \$</b>
EQ/GF - Cost	Department of Environmental Protection	See Below	See Below
GF - Cost	Department of Agriculture	Minimal	-

Note: GF=General Fund EQ – Environmental Quality Fund

**Municipal Impact:** None**Explanation**

Additional new activities concerning reducing mercury in the environment will be required of the Department of Environmental Protection (DEP) due to passage of the bill. Ongoing administrative costs for processing notifications, processing exemptions from phase-out requirements, requests for alternative labeling requirements, and the review of collection system plans are anticipated to cost approximately \$20,000 - \$30,000 or divert  $\frac{1}{4}$  to  $\frac{1}{2}$  of an analyst and related expenses from current duties.

Participation in a regional, multi-state clearing house (which is required in the bill) is funded through the DEP's dues to the Northeast Waste Management Officials Association. Currently, \$5,000 of the states dues is targeted for use to maintain the clearing house. The clearing house is anticipated to reduce the on-going receipt and processing of information by the individual states.

Requiring the DEP in consultation with the Department of Agriculture to examine the feasibility of implementing a collection and replacement program for dairy manometers and implementing one, is anticipated to be handled within normal budgetary resources. Information is currently available on this subject and there are less

than one dozen left in the State.

Costs would also be incurred for public education and outreach activities by the DEP concerning mercury reduction. A minimal program could be accomplished at a cost of approximately \$25,000. Additional activities would increase costs.

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**OLR Bill Analysis***sHB 5539***AN ACT CONCERNING MERCURY EDUCATION AND REDUCTION****SUMMARY:**

This bill establishes a comprehensive scheme governing the sale, use, and notification requirements for mercury and many products that contain mercury.

The bill requires manufacturers to notify the Department of Environmental Protection (DEP) commissioner of their products' mercury content and imposes other notice requirements. It restricts the sale and use of a number of mercury-added products, phasing down their maximum allowable mercury content. It generally bans the sale, starting January 1, 2003, of mercury thermometers and other products.

The bill requires the commissioner to work with a regional, multi-state clearinghouse to implement the bill. He must consider the clearinghouse's decisions in making determinations with respect to the bill's requirements.

The bill requires mercury-added products and their packaging to be labeled as to their mercury content. It requires manufacturers of mercury-added products to develop and implement plans for their collection and recycling and report to DEP on the system's effectiveness. The collection requirements do not apply to certain products, such as cosmetics and pharmaceuticals meant to be totally consumed during use, and photographic film and paper. The commissioner must review state regulations on the handling of mercury wastes and may, if necessary, amend them to facilitate collection.

Mercury-added products manufactured before July 1, 2002 are exempt from the bill's phase-down standards, labeling, and collection provisions. These include novelties containing mercury, mercury fever thermometers and mercury dairy manometers manufactured before that date.



The bill allows the DEP commissioner to implement an education, outreach, and assistance program for households and affected parties.

EFFECTIVE DATE: July 1, 2002

## **REGIONAL CLEARINGHOUSE**

The bill requires the commissioner to participate in creating and implementing a regional, multi-state clearinghouse to help implement the bill, and to help coordinate reviews of the manufacturers' notifications about mercury-added products, applications for phase-down exemptions, collection system plans, disclosures of mercury content, applications for alternative labeling or notification systems, education and outreach activities, and other related functions.

## **MANUFACTURERS' NOTICE TO DEP**

Starting January 1, 2003, the bill requires manufacturers to provide written notice to DEP or the clearinghouse of their mercury-added products before offering them for sale or use or distributing them for promotional reasons. Manufacturers include importers and distributors of foreign-made products. Mercury-added products are products, product components, commodities, or chemicals to which mercury has been intentionally added to provide a specific characteristic or perform a specific function. It does not include packaging, which is covered by existing law. With the commissioner's approval, a manufacturer can provide information about a product category rather than an individual product.

The notice must include:

1. the manufacturer's name and address and the name, address, and phone number of its contact person;
2. a brief description of the product or product line; and
3. the product's mercury content.

The mercury content must be identified within the following ranges: less than 5 milligrams (thousandths of a gram); 5 to 10 milligrams; 10 to 50 milligrams; 50 to 100 milligrams; 100 to 1,000 milligrams (one gram); or more than one gram. The manufacturer must revise this information or at DEP's request when there is a significant change.

State law on trade secrets applies to public disclosure of information submitted to DEP under the bill. But, DEP may provide such information to the clearinghouse and help the clearinghouse in compile and analyze it, so long as neither one identifies any manufacturers or reveals confidential information.

These requirements do not apply to any mercury-added product for which federal law preempts state authority about notice requirements.

## **SALES RESTRICTIONS ON MERCURY-ADDED PRODUCTS-GENERAL PROVISIONS**

### ***Phase-Down of Allowable Mercury Content***

The bill bars anyone from offering for sale or use, or distributing for promotional purposes, mercury-added products with mercury content above the levels specified in the bill. Starting July 1, 2004, the standard is (1) one gram for fabricated products, such as lamps, switches, and measuring devices, and (2) 250 parts per million (ppm) for formulated products, such as cosmetics and pharmaceutical products. Starting July 1, 2006, the standard falls to 100 milligrams (0.1 gram) for fabricated products and 50 ppm for formulated products.

By July 1, 2003, the commissioner must convene a working group, including government representatives of other northeastern states, to study and recommend ways to regulate mercury-added products that have a mercury content between 10 and 100 milligrams or 10 and 50 ppm.

The phase-out limits apply to each component part of products that contain one or more mercury components, and not the entire product.

### ***Exemptions***

The commissioner must exempt products from these limits if the level of mercury or its compounds is needed to comply with state or federal health or safety requirements. The manufacturer must provide the commissioner and the clearinghouse with information demonstrating the need for such an exemption.

A manufacturer can seek a modified or conditional exemption from the commissioner and the clearinghouse for up to four years from the limits on total mercury content for a product or product category. To

assure consistency the commissioner must consult with the clearinghouse and other states, Canadian provinces, and regional government organizations before issuing such an exemption. The commissioner may renew a modified or conditional exemption for up to four years, if the manufacturer applies for one and the commissioner finds that the manufacturer has met the clearinghouse's requirements for such exemptions, and complied with all the conditions of the original approval. The commissioner may grant such renewals more than once.

## **RESTRICTIONS ON SPECIFIC PRODUCTS**

### ***Novelties***

The bill bans anyone, as of July 1, 2003, from offering for sale or use, or distributing for promotional purposes, mercury-added novelties. These are products intended mainly for personal or household enjoyment or for adornment, such as toys, games, ornaments, holiday decorations, apparel, jewelry, figurines, and yard statues. But, the fact a product contains a removable button battery does not by itself make it a novelty banned by the bill. Novelty manufacturers must notify retailers that sell their products of the ban and inform them how to properly dispose of their products.

### ***Thermometers***

The bill bans anyone, as of January 1, 2003, from offering for sale or use, or the distributing for promotional purposes, mercury fever thermometers, except under a doctor's prescription. Thermometer manufacturers must give the buyer or recipient a notice of the thermometer's mercury content and instructions on safe handling and proper cleanup if a thermometer breaks. This provision does not apply to digital thermometers that contain a button cell battery containing mercury.

### ***Dairy Manometers***

The bill bans, as of July 1, 2003, anyone from offering for sale or use, or distributing for promotional purposes, mercury dairy manometers (devices that measure the pressure on milking lines). Manufacturers must notify retailers about the ban and how to properly dispose of the manometers. The DEP commissioner, in consultation with the agriculture commissioner, must examine the feasibility of

implementing a collection and replacement program for these devices, and implement it within available resources.

## **LABELING**

### ***General Requirements***

Beginning July 1, 2004, mercury-added products described above cannot be offered for sale or use or distributed for promotional purposes unless they comply with the bill's labeling standards. The standards apply to labeling on the product itself and either its packaging or care-and-use manual.

If a product contains a removable mercury-added product as a component, both the product and component must be labeled. The product label must identify the mercury-added component so that it may be located.

Labels on packaging must be clearly visible before the sale. They must inform the buyer, in words or symbols, that mercury is present in the product and that it should be properly disposed of or recycled. Labels on products must be designed to last for the product's life.

Starting July 1, 2004, anyone offering a mercury-added product for sale, use, or distribution must clearly advise the buyer in writing before the sale that the product contains mercury. This requirement applies to all transactions in which the buyer cannot see the package label or product before purchasing it. Examples of such transactions are catalog, telephone, and online sales.

The product manufacturer is responsible for labeling unless the wholesaler or retailer agrees in writing to take responsibility for implementing an alternative to the labeling requirements as the bill provides.

Retailers will not be found in violation if they are unaware a product contained mercury.

### ***Specific Products***

The manufacturer is generally responsible for meeting the above requirements. But (1) no package labeling is required in the case of

large appliances in stores where are floor models; (2) no product labeling is required for mercury thermometers or button cell batteries containing mercury; (3) vehicle manufacturers can place a label on the vehicle door identifying the vehicle's mercury-added components rather than labeling them individually; (4) products whose only mercury components are button cell batteries containing mercury do not require a product label, but can meet the requirements by including a label in the product instructions, if any, and on the packaging.

(Appliances include such items as microwave ovens and portable heaters, as well as refrigerators, washers, and dryers.)

### ***Alternative Compliance***

A manufacturer can apply to the commissioner and the clearinghouse for an alternative way of meeting the labeling standards if (1) compliance with them is not feasible; (2) the proposed alternative would be as effective in providing presale notification of mercury content, and instructions on proper disposal; or (3) federal law preempts state authority over labeling.

## **COLLECTION SYSTEM**

### ***Plan***

The bill bans anyone, beginning July 1, 2003, from offering for sale or use, or distributing for promotional purposes any mercury-added product unless the manufacturer has submitted a plan to DEP for a system to collect such products. If a mercury-added product is a component of another product, the system must provide for the removal and collection of the mercury-added component or collection of both the mercury-added component and the product containing it.

The collection system must include:

1. an educational component to inform the public about the program's purpose and how to participate in it;
2. a targeted capture rate for components or products;
3. an implementation and financing plan;
4. documentation of the willingness of all of the systems' participants to implement the system;

5. a description of the measures the manufacturer will use and report to demonstrate that the system meets the capture rate;
6. a description of additional or alternative measures that will be used if program targets are not met; and
7. a recycling or disposal plan, and an identification of any regulatory barriers to such a plan.

The commissioner must review any of the identified barriers and, if necessary, may amend regulations as appropriate to facilitate collection.

The bill prohibits the state or local governments from paying for the collection system.

By January 1, 2004, and every two years thereafter, the manufacturer or entity that submitted the collection plan on the manufacturer's behalf must report to the commissioner and the clearinghouse on its effectiveness. The report must include an estimate of the amount of mercury collected, the capture rate for mercury-added products or components, the results of the plan's other performance measures, and such other information the commissioner requires. The commissioner must make the reports available to the public.

### ***Exemptions***

The bill exempts the following from collection requirements:

1. formulated mercury-added products intended to be consumed in use, such as cosmetics, pharmaceuticals, chemical reagents and other laboratory chemicals;
2. products where the only mercury is contained in a component that the buyer cannot feasibly remove, such as liquid crystal display backlighting;
3. photographic film and paper; and
4. any other products containing less than 10 milligrams of mercury, or that the commissioner decides are too few in number to make a collection plan feasible.

### **ELEMENTAL MERCURY**

The bill bars anyone from offering for sale, use, or promotional purposes elemental mercury without providing the Material Safety

Data Sheet prescribed under federal law. Starting July 1, 2003, the seller, distributor, or provider must require the buyer to sign a statement at the time of receipt that he (1) will only use the mercury for medical, dental amalgam dispose-caps, research, or manufacturing purposes; (2) understands that mercury is toxic and will store and use it safely; and (3) will not dispose of the mercury improperly, such as discarding it as garbage.

## **PUBLIC EDUCATION PROGRAM**

The bill allows the commissioner, in consultation with other state agencies, to develop a comprehensive education, outreach, and assistance program for businesses (including manufacturers, waste generators, and others), solid waste management agencies and related entities, recyclers, scrap metal processors, health care facilities, institutions, schools, households, and other interested groups. The program may focus on (1) the hazards of mercury; (2) the responsibilities of manufacturers, agencies and individuals under the bill; and (3) voluntary efforts they can undertake to help reduce mercury in the environment.

The commissioner, in conjunction with manufacturers and other affected businesses, may promote the program's development and implementation. He may cooperate with other states, provinces, and regional organizations in developing public education, outreach and assistance programs. He may develop an awards program to recognize the accomplishments of entities that exceed the bill's requirements and excel at reducing or eliminating mercury in air emissions or releases.

## **COMMITTEE ACTION**

Environment Committee

Joint Favorable Substitute

Yea 25      Nay 3